

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No.14922 of 1999
Date of decision December 15, 2009

Bhagirath Sharma and others

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present:- Mr. H. S. Saini, Advocate
for the petitioners.

Ms. Lisa Gill, Advocate
for the respondents.

K. Kannan, J (oral).

1. The writ petitioners who were Junior Assistants posted as Readers in the subordinate judiciary challenge the reduction of pay scales and recoveries sought to be made when through the proceedings of the Government of Punjab, Department of Finance, notification issued on 19.5.1998, the government had decided to amend the Second Schedule to the Punjab Civil Service Revised Pay First Amendment Rules of 1998. The amendment was issued to take effect from 1.1.1996 retrospectively.

2. The petitioners' complaint is that they had been working as ministerial staff as Senior Clerks and Junior Assistants who were put on time scale of Rs.1500-2700 and after 1.1.1996 the scales had been revised and assigned to the scale of Rs.5000-8100. By the impugned proceedings through an office order dated 13.9.1999, the junior assistants were put in the time scale of Rs.4400-7000 w.e.f. 1.1.1996. This resulted in a reduction of scale of pay for persons who had drawn a higher pay when

the scales were revised to 5000-8100. When the revision of scales had taken place, it was reduced from Rs.5000-8100 to 4400-7000 and no pay protection had been given to them unlike other classes of persons to whom such protection was given. According to the petitioner the retrospective reduction of scale without protecting the pay which they were drawing was arbitrary. It also discriminated when certain other classes of persons, who like the Duplicating Machine Operators, belonging to the operational staff had been given pay protection when the scale of pay had been reduced. Similarly even in the National Training Institute the craft instructors were given pay protection by applying it uniformly to all persons, whether promoted before or after 1.1.1996.

3. All the petitioners are persons who had been promoted after 1.1.1996 and who had obtained the higher revised scale but when the revision of scale had been made to a lower scale the higher salary drawn was not protected. Learned counsel for the petitioner refers to a judgment of the Hon'ble Supreme Court in **Chairman Railway Board and others Vs. C.R. Rangadhamaiah and others (1997) 6 SCC 623** that dealt with the case of effect of retrospective amendment withdrawing vested or accrued rights of government employees. The Hon'ble Supreme Court held that any retrospective amendment which has the effect of taking away an accrued right of an employee would be liable to be struck down. Learned counsel also refers to a situation of 10 other employees similarly placed, who were working as Junior Assistants in various other departments like Colleges in U.T.Administration, Chandigarh and who were afforded the pay protection while retrospective application of scale of pay was sought to be made through an intervention of order of the Central Administrative Tribunal in OA No. 316/CH/2001 by its order dated 11.3.2003. According to him, the petitioners could not have any relief before CAT only because they were members of the judiciary and therefore

they have sought relief before this Court and they should also enjoy the same relief as the persons similarly situated.

4. The office order, while reducing the scales of pay to Rs.4400-7000 against the existing scale of Rs.5000-8100 could not have restricted the benefit of pay protection only to persons who had been promoted even before 1.1.1996. If the revision of pay scales had not been brought immediately on 1.1.1996 and all the petitioners had been provided for higher scales from 1.1.1996 an office order that was brought on 13.9.1999 could not deny such protection to persons who had been promoted subsequently on 1.1.1996 and who had received the higher scales. The revised scale of Rs.4400-7000 should be applied only after providing for protection of salary at the scale which they were drawing. Accordingly, the impugned office order under Annexure P-1 is quashed.

5. The writ petition is allowed with protection granted as aforesaid. There shall, however, be no order as to costs.

(K. KANNAN)
JUDGE

December 15 , 2009
archana